IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 15941 of 2004

Between:

S.Syeda, S/o. Mahaboob Saheb,
R/o. Vinukonda, Guntur District.

..... PETITIONER

AND

1 The Collector (Panchayat Wing), Guntur, Guntur District, A.P.,
2 M.V. Appa Rao, S/o. Ram Prasad,
R/o. Kothapeta, Vinukonda, Guntur District, A.P.,
3 P. Purnachandra Rao, S/o. Bikshalu,
R/o. Samathanaringloure, Vinukonda, Guntur District, A.P.,

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction, declaring the proceedings No.Roc.No.5305/2002-G1, dated 27-8-2004 of the 1st Respondent herein, as arbitrary, illegal, colurable exercise of power, violative of the provisions of the A.P. Panchayat Raj Act, 1994 and the A.P. State Audit Act, 1989, apart from violative of principles of natural justice and the Fundamental Rights guaranteed under Article 14 of the Constitution of India and consequently direct the 1st respondent to permit him to function as Incharge Sarpanch of Vinukonda Gram Panchayat.

For the Petitioner: MR.C.V.MOHAN REDDY , Advocate

For the Respondent No.1: GP FOR PANCHAYAT RAJ & RURAL DEV.

For the Respondents 2 and 3:Sri K.S.Murthy, Advocate

The Court made the following :

ORAL ORDER:

By proceedings in ROC No.5305/2002-G1 dt. 29-6-2004, the first respondent, namely, the Collector (Pt. Wing), Guntur, placed the elected Sarpanch of Vinukonda Panchayat, by name, Smt. Ch. Hanumayamma under suspension, for certain irregularities committed by her in the administration of gram Panchayat, for a period of three months pending enquiry. He also issued direction to Upa Sarpanch to take charge from the outgoing Sarpanch. At that stage, respondents 2 and 3, who are members of the Vinukonda Panchayat, filed WP No.14596/2004 making grievance as regards non-consideration of their representation dt. 15-7-2004 by the Collector (Panchayat Wing) Guntur District, wherein it was stated that there was already a direction against Upa-Sarpanch, the petitioner herein, to pay back an amount of Rs.4,89,000/- said to have been misappropriated by him and keeping him in-charge of the Sarpach is detrimental to the interest of the Gram Panchayat. When this court issued direction to the Collector to know the outcome of the representation dt. 15-7-2004 made by the respondents 2 and 3, the impugned order dt. 27-8-2004 came to be passed, whereunder orders issued in proceedings RC No.5305/2002-G1 dt. 29-6-2004 to the extent of keeping the Upa-Sarpanch, Sarpanch in-charge of Vinukona Panchayat are set-aside pending finalization of appointment of temporary Sarpanch

and pending finalization of action against Upa-Sarpanch. The correctness of which is under challenge in the present writ petition.

Sri C.V.Mohan Reddy, learned counsel appearing for the petitioner contends that under Section 26 of the A.P. Panchayat Raj Act, 1994 (for short “the Act”), when the Sarpanch is under suspension or when the office of the Sarpanch is vacant, the Upa-Sarpanch shall exercise the powers and perform the functions of the Sarpanch until a new Sarpanch is declared elected and assumes office, therefore the impugned order passed by the Collector setting aside the orders passed by him earlier dt. 29-6-2004 keeping the petitioner, in charge of the Sarpanch is illegal and arbitrary. He further contends that temporary Sarpanch appointed under sub-section (3) of section 26 can be removed only after giving him an opportunity to show cause against such removal, which was not done in the case of the petitioner. He further contends that no order removing the Sarpanch or Upa-Sarpanch shall be passed under section (6) of Sec.249 of the Act unless the person concerned has had an oopportunity of making a representation against the action proposed. In view the same, the impugned order is liable to be set-aside.

Learned Government Pleader for Panchayat Raj submits that when elected Sarpanch, who was involved in misappropriation of the Panchayat funds was placed under suspension, equally the petitioner against whom an order dt. 9-7-2003 was issued for recovery of the misappropriated amount cannot be kept in charge of the office of Sarpanch.

Learned counsel for respondents 2 and 3 submits that when Sarpanch was placed under suspension for certain irregularities committed by her, the petitioner against whom an order of recovery has been passed cannot be conferred any benefit.

It is not in dispute the petitioner was served with a notice in ROC No.1458 /2001-G2 dt. 9-7-2003 calling upon him to show cause why an amount of Rs.4,89,314/- should not be recovered under the provisions of A.P. Revenue Recovery Act, 1864 for irregularities committed by him when he was Sarpanch of the office earlier. Section 19 of the Act contemplates disqualification of a candidate who is in arrears of any dues including the sums surcharged otherwise than in a fiduciary capacity to the gram Panchayat upto and inclusive of the previous year, in respect of which a bill or notice has been duly served upon him and the time, if any, specified therein for payment as expired. Admittedly, notice dt. 9-7-2003 is issued specifying the amount,

which can be recovered from the petitioner under the provisions of A.P. Revenue Recovery Act as contemplated under Section 254. In view of the same, Upa-Sarpanch cannot be allowed to continue as incharge of Sarpanch. When the said proceedings were brought to the notice of the Collector, he rightly rectified the mistake, committed earlier keeping the petitioner incharge of Sarpanch, who was placed under suspension. In view of the same, the impugned order passed by the Collector (Panchayat Wing) Guntur District, Guntur dt. 27-8-2004 does not suffer from any infirmity warranting interference of this court.

The writ petition is accordingly dismissed. No costs.

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A.GOPAL REDDY,J

Dt. 9-9-2004

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1 The Collector (Panchayat Wing), Guntur, Guntur District, A.P.,
2. Two CCs to the Govt., Pleader for Panchayat Raj, High Court Buildigns, Hyderabad(OUT).

3. Two CD copies.